

**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF COLUMBIA**

BRUMBLES, RAVEN,)	
)	
Petitioner,)	Case No. 19CV02825
)	
v.)	RESPONDENTS' SUPPLEMENTAL
)	RESPONSE TO PETITION CHALLENGING
)	MEASURE 19-1 DETERMINATION
COLUMBIA COUNTY, COLUMBIA)	
COUNTY CLERK, acting by and through its)	
agent, DONALD CLACK,)	
)	
Respondents.)	

Comes now Columbia County and Columbia County Clerk (Respondents) and hereby supplements their response to Petitioner Raven Brumbles Petition Challenging the County Clerk's Measure 19-1 Determination.

The Oregon Constitution and ORS 250.168 require the Clerk to answer the following three questions in the affirmative or a prospective petition must be rejected: 1) Does the prospective petition include the full text of the proposed law or amendment to law; (2) Does the prospective petition embrace a single subject; and (3) Is the prospective petition legislative rather than administrative in nature. Prospective Petition 19-1 was properly rejected on all three questions. The County Clerk has not reviewed the measure for its general constitutionality; rather she has fulfilled her statutory duty to ensure that the proposed measure meets the threshold constitutional requirements, which necessarily involves reading a measure's substance. The Clerk is well within her duties to conduct a substantive review to determine

whether the measure complies with the limitations on the initiative power itself. *Geddry v. Richardson*, 296 Or.App 134, 145 (2019).

1. Prospective Petition 19-1 does not include the full text of the proposed law.

The proposed ordinance would amend existing acts, laws, rules, regulations, and orders, but fails to set out the full text of the affected enactments and show the proposed changes thereto. It is clear from the text of the measure that the intent is to amend the categories of laws set forth in the measure by making them invalid, null, void and of no effect in Columbia County or by partially repealing such laws as they apply to the County. A partial repeal is an “amendment.”

One need not look to Blacks Law Dictionary or to case law from 1893 to determine if a Measure is amendatory. In 2005, the Oregon Supreme Court ruled on the meaning of “amendment” in the context of Article IV, Section (1)(2)(d). A year after the Court in *Kerr* provided guidance on the intent of the full text requirement, the Oregon Supreme Court clarified the meaning of “amendment” related to the full text requirement in *State v. Upton*, 339 Or. 673 (2005). In *Upton*, the Court held that whether the existing laws “**remain valid laws**”, “**unchanged**” by the challenged measure is determinative. *Id at 721 (emphasis added)*. In *Upton*, a criminal defendant challenged juror input set out in SB 528 on the basis that existing laws did not allow juror input. The Court held that SB 528 only provides a procedure that permits juries to make findings of fact,

“As the state correctly argues, however, ORS 137.671(1) and ORS 137.090(1)(c) remain valid laws, unchanged by SB 528, and still require a judge to conclude that there are substantial and compelling reasons to support a sentence that that exceeds a presumptive range.” *Id.*

Unlike the facts in *Upton*, here the laws, rules, regulations and orders set forth in the prospective measure are changed by the Measure and do not “remain valid laws”. Rather, they are invalid, null, void, and of no effect in Columbia County.

The ruling in *Upton* is consistent with the purpose and intent of the Article IV, Section (1)(2)(d). The purpose and intent of the Article IV, Section 1(2)(d) full text requirement is “to provide sufficient information so that registered voters can intelligently evaluate whether to sign

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the initiative petition. *Mervyn's v. Reyes*, 169 Cal.App.4th. 93 (1919).¹ It is essential for the elector to understand the law which is proposed to be added or subtracted from in order to vote intelligently. *Kerr v. Bradbury*, 193 Or.App 304 (2004).

Petitioner attempts to downplay the fact that 9 generally described categories of laws and any other "Extraterritorial Act" would be amended by this measure, making them "invalid", "null, void and of no effect." Rather, Petitioner would like the Court to believe that this proposed measure would enact "a brand new prohibition on certain activities-namely County enforcement of foreign firearms laws." This position is misleading. In November, 2018, Petitioner Chris Brumbles' initiative measure called the "Second Amendment Preservation Ordinance" or ("SAPO") was enacted by Columbia County voters. The SAPO is currently an Ordinance in Columbia County, Oregon, and is attached hereto. The SAPO specifically prohibits the County from "enforcing any element of such acts, laws, orders, mandates, rules or regulations, that infringe on the right by People to keep and bear arms, including, but not limited to the following:

- "a) Registration requirements for existing lawfully owned firearms;
- b) Prohibitions, regulations, and/or use restrictions related to ownership of non-fully automatic firearms, including but not limited to semi-automatic firearms; including semi-automatic firearms that have appearance or features similar to fully automatic firearms and/or military "assault style" firearms;

¹ Related to initiatives, the Court cited several additional cases explaining the purpose of the full text rule. See eg. *Mervyn's v. Reyes*, 69 Cal.App.4th.93 (1998) ("The purpose of the full text requirement is to provide sufficient information so that registered voters can intelligently evaluate whether to sign the initiative petition."; *State v. Fulton*, 99 Ohio St. 168 (1919) (publication of full text of amended constitutional provision required because it is "essential for the elector to have***the section which is proposed to be added or subtracted from. If he is to vote intelligently, he must have this knowledge. Otherwise, in many instances he would be required to vote in the dark."). The Court in *Kerr* held this same purpose applies to Article IV, Section 1(2)(d) determinations related to local initiative measures.

- c) Prohibition, regulations, and/or use restrictions limiting hand grips, stock, flash suppressors, bayonet mounts, magazine capacity, clip capacity, internal capacity, or types of ammunition available for sale, possession or use;
- d) Registration and background check requirements beyond those customarily required at time of purchase prior to December 2012;
- e) Restrictions prohibiting the possession, carry or transport of lawfully acquired firearms or ammunition by law abiding adult citizens or minors supervised by adults.”

An Ordinance already exists in the County prohibiting “enforcement” of firearm laws in the County. Measure 19-1 goes well beyond the terms of the SAPO by actually making “Extraterritorial Acts” invalid, null, void, and of no effect in the County and by so doing **does** amend firearm regulations as they apply in Columbia County. If a petitioner were able to avoid the full text requirements by simply avoiding the word “amend” in the text of the measure, the purpose and intent of the constitutional requirement would be destroyed and the electors of Columbia County would be harmed as a result.

The County does not disagree that the full text of a measure that is being fully repealed is not required to be set forth in full. However, this measure is not a full repeal of any of the Extraterritorial Acts to the extent that we can tell what those are. Rather, the language partially repeals these laws as they apply to Columbia County, thereby amending them.²

Petitioner would require the County Clerk to identify specific laws that are being amended. This is ridiculous and highlights the Clerks point that it is the Petitioner who should be required to identify the laws that are intended to be invalid, null, void and of no effect in Columbia County, not the Clerk. Neither the Clerk, the County, nor the electors of the County should be forced to guess as to what laws Petitioner intends to be invalid, null, void, and of no effect. Voters must be provided sufficient information so that they can intelligently evaluate whether to sign the initiative petition and make an informed decision should the measure qualify for a ballot. Petitioner does not even set forth specific statutes that he intends to be invalid, null, void, and of no effect in Columbia County.

2. Petition 19-1 Embraces More Than One Subject.

² Even when an entire statute is being repealed, the petitioner would be required to cite the statute that would be repealed by the Measure. *Kerr v. Bradbury*, 193 Or App 304 (2004)

Measure IP 19-1 embraces more than one subject. Again Petitioner would have the Court believe that the one subject is “precisely—enforcement of firearms regulations by Columbia County.” This is incorrect. The Measure would go well beyond enforcement of firearms regulations by Columbia County. It would make nine general categories of federal, state, and local laws, rules, regulations and orders, and any other law that falls within the definition of “Extraterritorial Act”³ “invalid” in Columbia County:

“All local, state and federal acts, laws, orders, rules, or regulations, which restrict or affect an individual person’s or The Peoples’, general right to keep and bear arms, including firearms, firearm accessories or ammunition shall be foreign laws and defined as Extraterritorial Acts, and are invalid in this County.” IP 19-1; Section 4.A (emphasis added).

The measure clearly intends to apply to federal, state, and local agencies in Columbia County.

Oregon case law is clear that even if a single word such as “firearm” or derivative thereof, is used in every sentence in the proposed measure, if the measure includes more than one unifying principle connecting all provisions in the measure or other matters not properly connected it fails the one subject test. *State v. Mercer*, 269 Or App 135, 139 (2015). In *State v. Mercer*, the Court of Appeals reviewed the standard for determining whether “other matters” contained in measure are “properly connected to a unifying principal”. *Id* at 138.

“That standard typically is satisfied so long as a proposed law or amendment

Addresses a single **substantive area of law** even if it ‘includes a wide range of connected matters intended to accomplish the goal of that single subject.” *Id* at 139.

The Court in *Mercer* described two cases in which the all of the matters connected to the unifying principle were related to the substantive area of the law known as “criminal law”. [(*Id.* citing *State v. Fugate*, 332 Or. 195, 204 (2001) (“Notwithstanding the wide range of **criminal justice matters** addressed by the law, the court upheld it against a single-subject challenge”) (*emphasis added*); and *State ex rel. Caleb v. Beesley*, 326 Or. 83 (1997)].

³ “All local, state and federal acts, laws, orders, rules, or regulations, which restrict or affect an individual person’s, or the “Peoples’, general right to keep and bear arms, including firearms and firearm accessories or ammunition shall be foreign laws and defined as Extraterritorial Acts.” IP 19-1; Section 4.A.

By contrast, in this case, we have a partial list of the substantive areas of law that are addressed because Petitioner has failed to set forth all of the laws intended to be invalid, null, void, and of no effect in Columbia County. Substantive law refers to the body of rules that determine the rights and obligations of individuals and collective bodies, such as tort law, criminal law, real property law, etc. From the partial list provided, the Clerk has identified at least two substantive areas of the law: civil law (taxes and fees; registration; background checks; civil forfeiture, contracts; concealed handgun permits, budget law and contract law, etc.); and criminal law (related to unlawful possession; search and seizure, criminal forfeiture, etc). IP 19-1 clearly addresses more than one substantive area of the law. This is a classic case of “logrolling.” “Logrolling” is defined as “...combining [unrelated] subjects representing diverse interests in order to unite members of the legislature who favored either in support of all.” *Id.* at 439. (Emphasis added).

3. Measure 19-1 is Administrative.

Petitioner argues that there is no “County policy or legislation that includes the prohibition contained in IP 19-1.” As described above, this is incorrect. Petitioner’s Second Amendment Preservation Ordinance was approved by the voters of Columbia County in November, 2018. The Court should disregard Petitioner’s statements that there is no existing law in Columbia County. In addition to the County Ordinance, the County and other government agencies that would be effected by Measure 19-1 are required to comply with existing Federal and State laws, relating to firearms. The Clerk maintains that certain provisions of IP 19-1 as described in Respondents’ Response to Petition Challenging 19-1 Determination are administrative, executive, adjudicative or advisory and the proposed initiative is for that reason inappropriate as previously described. *Geddry v. Richardson*, 296 Or App 134 (2019).

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4. Conclusion.

As set forth herein, Initiative Petition 19-1 was properly rejected by the County Clerk. The proposed ordinance violates the “full text”, “single-subject” and “administrative” requirements for initiative petitions. The Court should dismiss Petitioner’s Petition Challenging County Clerk’s Measure 19-1 Determination.

Dated this 14th day of March, 2019.

/s Sarah Hanson

Sarah Hanson, OSB #983618

Attorney for Respondents

sarah.hanson@co.columbia.or.us

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of March, 2019, I caused a true copy of the RESPONDENTS' SUPPLEMENTAL RESPONSE TO PETITION CHALLENGING MEASURE 19-1 DETERMINATION to be served upon the following named parties, or their registered agents or their attorney by email and first class mail as indicated below and addressed to the following:

Tyler Smith
Attorney for Petitioner
181 N. Grant Street, Suite 212
Canby, OR 97013

Mailing was done by X first class mail, and by ___ certified or ___ registered mail, return receipt requested with restricted delivery, or ___ express mail, eFiling ___, and email X.

DATED this 14th day of March, 2019.

s/ Sarah Hanson
Sarah Hanson, OSB #983618
Attorney for Respondents
sarah.hanson@co.columbia.or.us